

# California Ocean Plan

## ASBS Exceptions

### Board Meeting

October 18, 2011

Items 3-6

State Water Resources Control Board

Ocean Unit, Division of Water Quality

First, some general points on ASBS discharges...



# Public Resources Code

- State Water Quality Protection Areas (SWQPAs)
  - designated to protect marine species and communities from an undesirable alteration in natural water quality
  - waste discharges shall be **prohibited or limited by the imposition of special conditions**
- ASBS are a subset of SWQPAs and require **special protection** as determined by the State Water Resources Control Board pursuant to the California Ocean Plan

# Ocean Plan - Areas of Special Biological Significance (ASBS), Program of Implementation, Section III(E)(1)

- **“Waste\* shall not be discharged to” ASBS. “Discharges shall be located a sufficient distance” from ASBS to “assure maintenance of natural water quality conditions.”**

**\* Waste is defined: “includes a discharger’s total discharge, of whatever origin...”**



# Alternatives

- **No Action – continue with Enforcement:**
  - **In most cases compliance means either ceasing operations or diverting discharges, sometimes miles, with env. impacts**
- **Amend Ocean Plan to allow waste discharges under certain special conditions:**
  - **Lengthy process, unsure outcome, not enough information currently to craft a permanent amendment acceptable to all parties.**
    - **in the meantime discharges continue unabated? or aggressive enforcement?**
- **Adopt Exception/Special Protections:**
  - **Pragmatic approach to controlling discharges now while working toward a potential Ocean Plan amendment in the future**

# Ocean Plan Exceptions

- **State Water Board must:**
  - **Comply with CEQA**
  - **Protect (“not compromise”) beneficial uses**
  - **Assure that the public interest is served.**
- **Subject to Triennial Review**





# Agenda Item 3

## Telonicher Marine Laboratory



# HSU Telonicher Marine Laboratory (TML)

Consideration of a proposed Resolution approving an exception to the California Ocean Plan for the Telonicher Marine Laboratory discharge into the Trinidad Head Area of Special Biological Significance

Initial Study and Draft Mitigated

Negative Declaration released August 25, 2011

Comments due: October 10, 2011

Comments received: One, from Humboldt BayKeeper

Public Hearing: October 18, 2011





# Comments and Responses

Comment: Insufficient information and data was gathered and analyzed in the Initial Study in order for State Board staff to recommend an exception

- Response: TML provided a completed exception application with all the information and supporting materials.

Comment: The State Water Board will be making a decision based on only one sampling event. Hexavalent chromium is one of the constituents of concern, yet no further investigations have been carried out to identify the source and no mitigation measures or further sampling is apparent

- Response: The discharge location is complex, with other potential pollution sources (including Trinidad's storm drain, the pier, and associated waterfront activities.) Chromium may be contributed by these other sources. TML is required to perform the Table B monitoring which includes total chromium.



# Comments and Responses

Comment: Stormwater discharge samples are very high in metals and PAHs, exceed Ocean Plan 6-month median and some are ten times higher. The proposed mitigation measures are not sufficient to ensure protection of the ASBS

- Response: We agree that additional sampling is needed, and will be required in their permit. TML is in the planning phase of installing appropriate BMPs (possibly diversions) for their stormwater.

Comment: There is some inconsistency with the water quality sampling requirements in the Initial Study at p. 53, with regard to waste seawater effluent sampling, reference site sampling. The language must be clarified

- Response: The draft mitigated negative declaration and Attachment A (Special Protections) to the Proposed Resolution are clear on the monitoring requirements. The Initial Study is a supporting document, and it is not necessary to revise if the Resolution is adopted by the Board.



# Change Sheet

Minor nonsubstantive changes to the Mitigated Negative Declaration to be consistent with the Special Protections, Attachment A, to the Resolution





# Staff Recommendation

- **Adopt Exception**
  - **TML has made important improvements since the original notice of violation.**
  - **Beneficial uses must be protected through the implementation of the Exception's Special Protections.**
  - **The public interest will be served by the continued operation of this important marine research and education institution.**







# Agenda Item 4

## Stanford University Hopkins Marine Station



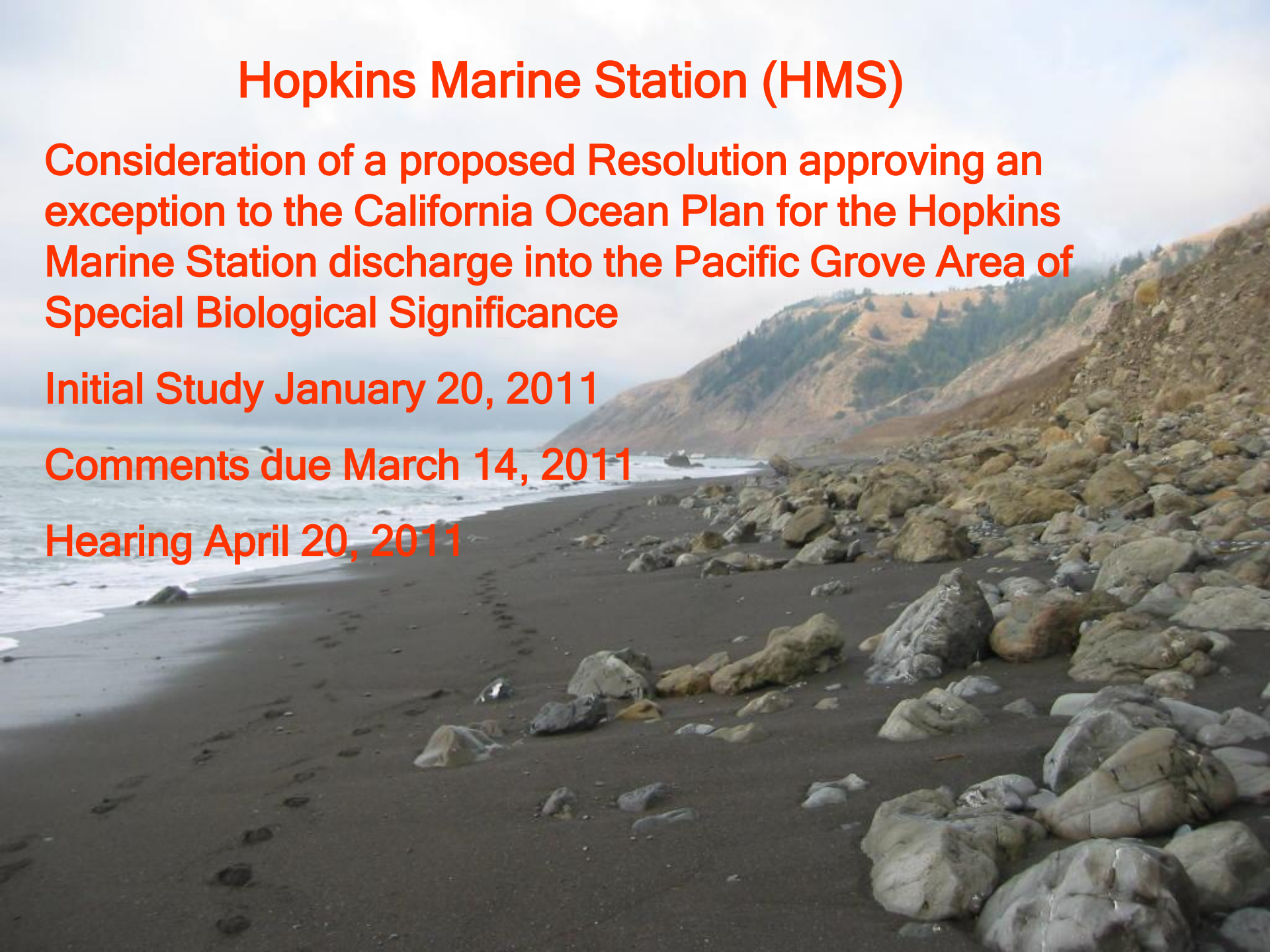
# Hopkins Marine Station (HMS)

Consideration of a proposed Resolution approving an exception to the California Ocean Plan for the Hopkins Marine Station discharge into the Pacific Grove Area of Special Biological Significance

Initial Study January 20, 2011

Comments due March 14, 2011

Hearing April 20, 2011





# Proximity of HMS, MB Aquarium, MS4s, MPAs and ASBS



# Hopkins Marine Station

- Changes
  - Technical Revisions to Initial Study
  - Revisions to Mitigated Negative Declaration Conditions and Special Protections to address comments received





# HMS Conditions

Changes summarized:

- A butyltin study is required for the first year of the permit cycle near the Monterey Boat Yard.  
Collaboration between HMS, Monterey Bay Aquarium and the City of Pacific Grove is encouraged.
- HMS is not required to monitor City of Pacific Grove “only” storm drains.
- HMS must only monitor storm drains that it contributes to, including co-mingled flows with Pacific Grove.  
Indicator bacteria need be monitored at only the larger storm water outfalls shared with Pacific Grove.





# HMS Conditions

Changes summarized:

- The Regional Water Board may reduce and/or eliminate certain monitoring requirements for constituents in storm water that routinely are found in concentrations below Ocean Plan objectives.
- Clarification to the receiving water monitoring: samples must be collected when annual waste seawater effluent and storm water effluent is sampled. Wet weather samples in the receiving water may be collected immediately following a storm event, but in no case more than 24 hours after, if sampling conditions are unsafe during the storm.



# Staff Recommendation

- **Adopt Exception**
  - **HMS has made important improvements since the original notice of violation.**
  - **Beneficial uses must be protected through the implementation of the Exception's Special Protections.**
  - **The public interest will be served by the continued operation of this important marine research and education institution.**





# Agenda Item 5

## Monterey Bay Aquarium





# Monterey Bay Aquarium

Consideration of a proposed Resolution approving an exception to the California Ocean Plan for the Monterey Bay Aquarium discharge into the Pacific Grove Area of Special Biological Significance

Initial Study and Draft Mitigated Negative Declaration  
January 20, 2011

Comments due March 14, 2011

Hearing April 20, 2011







ASBS



# Monterey Bay Aquarium

- Changes
  - Technical Revisions to Initial Study
  - Revisions to Mitigated Negative Declaration Conditions and Special Protections to address comments received



# Monterey Bay Aquarium Conditions

Changes summarized:

- For sediment monitoring the Regional Board may subsequently (after monitoring annually) alter this requirement once beneficial uses are shown to be protected. If initial results show no impact, than sediment toxicity study may be changed to once per permit cycle.
- A butyltin study is required for the first year of the permit cycle near the Monterey Boat Yard.  
Collaboration between HMS, Monterey Bay Aquarium and the City of Pacific Grove is encouraged.



# Monterey Bay Aquarium Conditions

Changes summarized:

- The Hovden Way storm water outfall is a large storm drain carrying co-mingled flows with the City of Monterey. Monitoring of this storm drain in collaboration with the City of Monterey is encouraged, alternatively, MBA may elect to sample their storm water effluent at the confluence prior to co-mingling with the City of Monterey.
- Sampling small storm drains on a rotating basis or composite basis may be used, and must include all drains throughout MBA even if outside ASBS boundary due to their proximity.





# Monterey Bay Aquarium Conditions

Changes summarized:

- The Regional Water Board may reduce and/or eliminate certain monitoring requirements for constituents in storm water that routinely are found in concentrations below Ocean Plan objectives.
- Clarification to the receiving water monitoring: samples must be collected when annual waste seawater effluent and storm water effluent is sampled. Wet weather samples in the receiving water may be collected immediately following a storm event, but in no case more than 24 hours after, if sampling conditions are unsafe during the storm.





# Staff Recommendation

- **Adopt Exception**
  - **The Aquarium has made important improvements since the original notice of violation.**
  - **Beneficial uses must be protected through the implementation of the Exception's Special Protections.**
  - **The public interest will be served by the continued operation of this important marine science and environmental education institution.**





# Agenda Item 6

## General Exception for 27 Storm Water and Nonpoint Source Applicants



# General Exception to the California Ocean Plan for Selected Discharges into Areas of Special Biological Significance with Special Protections

Draft Programmatic EIR January 14, 2011

Comments due May 20, 2011

Public Hearing May 18, 2011

27 Applicants

Existing discharges as of January 1, 2005





# Alternatives

- **No Action – continue with Enforcement:**
  - **In most cases compliance means either ceasing operations or diverting discharges, sometimes miles, with env. impacts**
- **Amend Ocean Plan to allow waste discharges under certain special conditions:**
  - **Lengthy process, unsure outcome, not enough information currently to craft a permanent amendment acceptable to all parties.**
    - **in the meantime discharges continue unabated? or aggressive enforcement?**
- **Adopt Individual Exceptions**
  - **time consumptive, would delay compliance**
- **Adopt General Exception/Special Protections:**
  - **Pragmatic approach to controlling discharges now while working toward a potential Ocean Plan amendment in the future**

# General Exception/ Special Protections

- General Exception is practical, cost effective, protective of environment
  - Adherence to stringent protection of ASBS via Terms and Conditions “Special Protections”
    - Prohibits most non-storm flows
    - Allows clean storm water runoff
    - Requires monitoring
  - Discharges will be implemented in a permit: NPDES, WDR
  - Does not treat all discharges identically
    - priority discharges identified in the Permit/SWMP for BMP application, and uses iterative process
    - Reasonably foreseeable BMPs identified in the PEIR
    - Not all discharges will need to install structural BMPs
  - Ultimate compliance in receiving water - must meet “Natural Water Quality”



# General Exception

- Relationship to Permits
  - Phase I MS4s
  - Phase II MS4s
  - Caltrans
  - Industrial General Permit
- Currently prohibited from discharge into ASBS
- Exception allows coverage under the permits



# Special Protections Compliance Schedule

- Within 1 year Dischargers must submit compliance strategy
- Within 18 months non-structural controls implemented
- Within 4 years:
  - Dischargers meet natural water quality
  - Structural controls implemented, targets:
    - End-of-pipe concentrations - Ocean Plan instantaneous maximum targets, or
    - Reduce pollutant loading by 90%
- Extensions may be allowed for delays due to good cause (permitting constraints or budget issues)





# General Exception and PEIR

- Summary of Comments Received
  - 34 Received
  - Applicants, NGOs, General Public, Government Agencies
  - Responses released October 7, 2011



# General Exception Comments Common Themes

- Individual Exceptions preferred method [4]  
Response: Staff resources are limited and General Exception deemed best approach to address illegal discharges
- Ditch the Exception and instead move directly to enforcement  
Response: Enforcement approach on such a large number of discharges is impractical and will not work: staff resource consumptive, environmentally damaging, hugely expensive, may result in continually non-compliance.
- Fails to protect public interest by allowing discharges to continue [3]  
Response: The Applicants of the General Exception will now be required to control waste discharges to the ASBS and meet special conditions; public interest and beneficial uses will be protected
- No proof of impacts from existing discharges/storm water [7]  
Response: Storm water is regulated under the Federal CWA and is known to carry pollutants; studies show that while water quality is generally good in ASBS there are elevated levels of certain pollutants, the same pollutants carried by storm water.

# General Exception Comments Common Themes

- BMPs capital cost too expensive [12]

Response: Appropriate BMPs implemented would reflect the constituents to be removed from the discharge; only priority discharges would need structural BMPs

- Monitoring costs excessive [10]

Response: Staff disagrees. Based on regional monitoring experience in southern CA, the costs are reasonable.

- Monitoring is unfunded mandate [5]

Response: Waste discharges are currently prohibited and are in violation of NPDES permits. The Special Protections allow controlled discharges with permit coverage. Monitoring is an essential part of compliance with the exception and required in permits.

- Table B end-of-pipe unjustifiable [7]

Response: These are targets, not effluent limits. Instantaneous maximum objectives are US EPA approved and our “best available science”



# General Exception Comments Common Themes

- Natural Water Quality 85<sup>th</sup> percentile unsubstantiated [5]  
Response: The 85<sup>th</sup> percentile addresses uncertainty in the use of reference site data, and is therefore protective of water quality
- Further studies needed to identify harm to ASBS [6]  
Response: We agree further studies are needed, and are proposed in the Special Protections
- Natural Water Quality not defined and difficult to enforce [12]  
Response: The NWQC established a working definition of water quality, which relies on reference sites as proxies. A flowcart has been developed to clarify steps to determine compliance or violation.
- Natural Water Quality unattainable [4]  
Response: We agree that anthropogenic pollution from many sources does influence natural water quality, however, when Special Protections are implemented, then natural water quality will be protected from the discharges covered by the exception.





# General Exception Comments Common Themes

- Compliance Timeline too short [8] or unattainable [3]  
Response: A single time-schedule is needed for the group of dischargers; dischargers have known for years that waste discharges must be addressed. Some projects are done or underway, grants funded by State
- Compliance Timeline too long [2]  
Response: The timeline was developed as part of the stakeholder process and to accommodate time for planning and implementation•
- Cessation of dry-weather flows impossible [5]  
Response: All discharges including dry-weather flows are prohibited since the 1980s; certain essential short-term flows are authorized in the Special Protections
- Municipalities not responsible for private pipes [6]  
Response: The municipality issuing the permits for those pipes would be responsible for ensuring Special Protections are carried out; reliance on public education. If private parties do not cooperate, then enforcement, in collaboration with Regional Water Board.



# General Exception

## Revisions to PEIR

- No substantive changes
- Most changes were associated with the Summary Section to make consistent with the rest of the document
- Other minor corrections and revisions



# Change Sheet

To add clarifications, no substantive changes





# State Water Board Funding to Municipalities

## ASBS Grants Program



- Administered by DFA
- Prop 84 bond money
- \$32,025,000 for local public agencies to comply with the waste discharge prohibition
  - Includes set-aside for monitoring
- The Board has approved a list of Projects recommended for funding

## Prop 84 Grants Project Status

### 14 EXECUTED AGREEMENTS :

✓ **County of Los Angeles**, Septic System Replacement Program at Zuma and Pt. Dume Beaches, \$2.5 Million

✓ **City of Laguna Beach**, Heisler Park ASBS, \$2.5 Million

✓ **City of Newport Beach**,  
Newport Coast ASBS Protection Implementation Program, \$2.5 Million

✓ **SCCWRP**, Assessing the  
Effectiveness of Prop 84 ASBS  
Grants, \$1,050,000

✓ **City of Pacific Grove**  
Urban Runoff Diversion  
Phase 3, \$2.4 million



✓ **City of Malibu** [2] Wildlife Road Treatment and ASBS Focused Outreach, \$540 thousand and Broad Beach Road Biofiltration, \$2.25 million

✓ **City of Carmel by the Sea** Carmel ASBS Projects, \$2.5 million

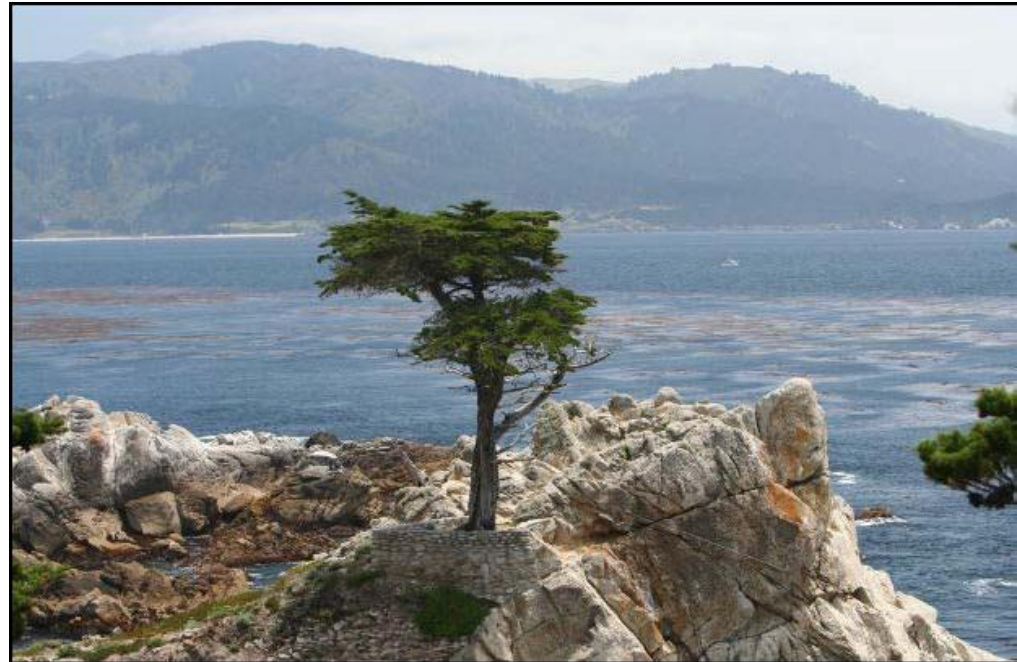
✓ **City of Trinidad** [2] Trinidad Pier Reconstruction, \$2.5 million and Trinidad Head ASBS Storm Water Management Improvement Project, \$2.5 million

✓ **Marin County** Duxbury Reef ASBS and Point Reyes Headlands ASBS Source Control Project, \$1.4 million

✓ **San Mateo County** James V Fitzgerald ASBS Pollution Reduction Program, \$2.3 million

✓ **San Mateo RCD** Reducing Pathogen and Sediment Pollution from Livestock, \$923 thousand

✓ **City of San Diego** La Jolla ASBS Protection Implementation Program, \$2.5 million





# Spotlight:

## Heisler Park ASBS Protection & Preservation Project

- ***City of Laguna Beach had the first ASBS Project to be executed.***
- Drought tolerant landscaping fed by new drip irrigation systems and Smart Timer irrigation controllers complement the new pathways and railings which serve to guide visitors and storm water sheet flows away from eroding cliffs.
- Two project areas have been reopened to the public, with the site design BMPs and LID features in place and functional.
- Phase III is approximately 60% complete.
- The new storm drain diversion pumps will be installed as the third and final project area is completed in the coming months.



# Staff Recommendation

- **Adopt Exception**
  - **Beneficial uses will be protected now through the implementation of the Exception's Special Protections.**
  - **The public interest will be served by maintaining important public services: flood control, national defense, waterfront activities and recreation.**
  - **Costs are reasonable in comparison to alternative of ceasing discharges**
  - **Staff will work to develop recommendations for an Ocean Plan amendment during the next triennial review**



